

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JAMES PAPA,

Plaintiff,

- against -

PICONE/McCULLAGH JOINT VENTURE,

Defendant.
-----X

Docket No.:

ECF CASE

COMPLAINT
06 CIV 15276 (SCR)

PLAINTIFF DEMANDS
A JURY TRIAL

Plaintiff, Plaintiff, JAMES PAPA, Plaintiff, JAMES PAPA, Plaintiff, JAMES PAPA, by his attorneys, G
Defendant, allege as follows:

1. This is an action to remedy the failure of Defendant to properly pay Plaintiff at the rate of time-and-a-half as required by the Fair Labor Standards Act of 1938, as amended, 29 USC § 201 *et seq.* Jurisdiction is conferred upon this Court by 29 USC § 216 (b) of the Fair Labor Standards Act, by 28 USC § 1331, as this action arises under the laws of the United States, 28 USC § 1337, as this action arises under Acts of Congress regulating commerce. Additionally, under the principle of pendent jurisdiction, Plaintiff claims failure to pay Plaintiff overtime at the rate of time-and-a-half as required by 12 NYCRR § 142-2.2.

PARTIES

2. Plaintiff, JAMES PAPA, (hereinafter PAPA) is a resident of the County of Westchester, and the State of New York.

3. Defendant PICONE/McCULLAGH (hereinafter PICONE) is a New York employer with offices located at 31 Garden Lane, Lawrence, New York 11559.

Defendant is an employer engaged in interstate commerce and to the New York State Labor Law (Labor Law §§190 *et seq.*)(6)

FACTS

4. Plaintiff was hired by Defendant on or about July 2006. Plaintiff was paid thirty-one (\$31.00) Dollars per hour which increased to thirty-three and fifty-nine (\$33.59) Dollars per hour during the course of the employment. Plaintiff was employed from August 2006 during his employment.

5. Plaintiff held an hourly paid non-exempt position. Plaintiff held an hourly position from August 2006 to August 2007. Plaintiff was paid \$31.00 per hour from August 2006 to August 2007, and \$33.59 per hour from August 2007 to August 2008.

6. Although Plaintiff was always required to work between 7:00 a.m. and 3:30 p.m. for lunch, he averaged more than 40 hours per week. Plaintiff worked from 7:00 a.m. to 3:30 p.m. as he was required to daily clean the inspector's and supervisor's trailers for 1 a.m. per day before the start of his normal shift. Thus, Plaintiff worked 45 hours per week.

AS AND FOR A FIRST CAUSE OF ACTION

7. Plaintiff repeats and re-alleges each allegation contained in each preceding paragraph of this Complaint as though fully set forth herein.

8. Although Plaintiff worked overtime during the period from August 2006 to August 2008, he did not receive either straight pay and/or overtime compensation for this period.

9. Plaintiff earned between \$31.00 and \$33.59 per hour during the time he was employed by Defendant.

10. Plaintiff received no compensation for the hours he worked overtime.

11. Plaintiff did not receive overtime payment at the rate of time-and-a-half, in violation of the Fair Labor Standards Act, although he worked more than forty (40) hours per week.

12. Defendant's failure to pay Plaintiff wages and Defendant's failure to pay Plaintiff time-and-a-half in violation of 12 NYCRR § 142-2.2; was willful.

AS AND FOR A SECOND CAUSE OF ACTION
PENDENT CAUSE OF ACTION

13. From July 2002 through August 2006, Plaintiff was paid time-and-a-half in violation of 12 NYCRR § 142-2.2;

14. From July, 2002 through August, 2006, Plaintiff was paid for hours worked, in violation of Labor Law § 190 *et seq.*, and § 652(1). This violation was willful.

WHEREFORE, Plaintiff requests this Court enter an Order in favor of Plaintiff and against Defendant:

On The Fair Labor Standards Act Causes of Action

(a) Declaring Defendant violated the Fair Labor Standards Act (*et seq.*) for the period between July 2002 through and including August 2006;

(b) Declaring Defendant's violation of the Fair Labor Standards Act was willful;

(c) Granting Plaintiff payment of his hourly wage for each and every hour worked during this periods;

(d) Granting Plaintiff time-and-a-half for each and every hour worked during these periods;

(e) Granting Plaintiff an equal amount of damages for the period (3) years before the filing of this Complaint; and

(f) Awarding Plaintiff his costs and reasonable attorneys' fees and further relief as to the Court seems just and proper.

On the New York State Labor Law Cause of Action

(g) Declaring Defendant violated the New York State Declaring Defendant violated the New York State
2.2;

(h) Declaring that Defendant s Declaring that Defendant s viola Declaring that Defendan

NYCRR §142-2.2 was willful;

(i) Granting Granting Plaintiff payment of his hourly wage for each and every hour worked during this periods;

(j) Awarding Plaintiff for the period July 2002 through August 2A
overtime at the rate of time and-a-half for working over forty (40) hours per week during

(k) Finding that Defendant's refusal to pay Plaintiff willful, and awarding Plaintiff an additional amount (25%) percent of the total amount of wages found to be due; and

(1) Awarding Plaintiff reasonable attorney s fees.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues properly before this Court. Plaintiff demands a trial by fact raised by this Complaint.

Dated: New Rochelle, New York
December 14, 2006

Yours, etc.,

GOODSTEIN & WEST

By: /S/
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